IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 27479 of 2006(U)

PETITIONER:

S.RAMACHANDRAN, NADASWARAM ARTIST,
KANJIRAKODE DEVAWOM, KOLLAM GROUP,
(KUTTIKKATTU VEEDU, VAISHANAVAM,
KANNIMMEL NAGAR-90, KILIKOLLOOR P.O., KOLLAM).

BY ADV. SRI.K.KARTHIKEYA PANICKER
SMT.DAYA K. PANICKER

RESPONDENTS:

1. TRAVANCORE DEVASWOM BOARD REPRESENTED BY THE SECRETARY, DEVASWOM BUILDINGS, THIRUVANANTHAPURAM.

2. THE COMMISSIONER,
TRAVANCORE DEVASWOM BOARD,THIRUVANANTHAPURAM.

3. THE CULTURAL DIRECTOR,
TRAVANCORE DEVASWOM BOARD, THIRUVANANTHAPURAM.

4. A.NARAYANAN KUTTY, INSTRUCTOR,NADASWARAM KSHETHRA KALA PEEDOM, PIRAPPANCODE, THIRUVANANTHAPURAM.

5. G.KRISHNAN, INSTRUCTOR, MUGAR SANK, KSHETHRA KALA PEEDOM, PIRAPPANCODE,THIRUVANANTHAPURAM.

6. P.PRAKASAN, INSTRUCTOR,
PANCHAVADHYAM, KSHETHRA KALA PEEDOM,
PIRAPPANCODE, THIRUVANANTHAPURAM.

7. C.PADMAKUMAR, INSTURCTOR,
PANCHAVADHYAM, KSHETHRA KALA PEEDOM,
PIRAPPANCODE, THIRUVANANTHAPURAM.

8. K.MANOJKUMAR, INSTRUCTOR, THAKIL, KSHETHRA KALA PEEDOM, PIRAPPANCODE,THIRUVANANTHAPURAM.

BY ADV.SRI.M.K.CHANDRAMOHAN DAS R1 TO R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO.27479 of 2006

Dated this the 10th day of January, 2007

JUDGMENT

The petitioner herein had filed O.P.No.39059/2001 in which the respondents 1 to 3 were parties. The additional 4th respondent got himself impleaded in these proceedings.

2. Later on, when the above original petition came up for consideration, the learned judge took note of the averments made by the respondents in their counter affidavit that there was no sanctioned post of teacher in Nadaswaram in the Kshethrakalapeedam, that the persons well versed in Nadaswaram were being appointed on other duty basis, that the petitioner and others were also posted on other duty and since the petitioner did not have a lien in the post of teacher, there was nothing illegal or irregular about his reversion. It was brought to the notice of the learned judge that sanctioned posts of teachers in Nadaswaram had been created and persons working in that post had since been absorbed. The relevant orders, namely, Exts.R4 (d) and (e) were produced along with the affidavit filed in support of the impleading petition of one of those so absorbed. Exts.R4(d) & (e) referred to above as also in Ext.P8 judgment are the impugned orders

herein. In O.P.No.39059/01, counsel appearing for the petitioners therein submitted that the posting of persons on other duty as teachers was made without issuing any notification calling for applications and while they were posted, the possibility of their absorption was not stated. It was also submitted that the incumbents who were posted on other duty, in the exigencies of service, were not entitled to be regularised, and further, that there should have been a notification and selection from among the Nadaswaram employees working under the Board. This Court took note of the above contentions raised by the counsel for the petitioner in reply to the facts and events that had taken place, including the issuance of Exts.R4(d) and (e), which corresponds to Exts.P6 and P7 produced and challenged in this writ petition. This court observed vide Ext.P8 judgment that the petitioner failed to challenge those orders, and therefore, no relief can be granted to him. The writ petition was disposed of permitting him to file a representation raising other issues and directing the respondent Travancore Devaswom Board to consider and pass orders on it.

3. The petitioner who failed to challenge Exts.P6 and P7, in the prior proceedings which was disposed of by Ext.P8 judgment, has chosen to challenge those orders in this subsequently filed writ

petition. The petitioner had the freedom to challenge Exts.R4(d) and (e) (Exts. P6 and P7) by amending the earlier original petition which was disposed of by Ext.P8 and avoid observation by this Court that he was not entitled to the reliefs for not challenging those orders. Having courted such an observation and finding, and having not challenged that judgment in appeal, the petitioner cannot maintain a subsequent writ petition to set aside the very same orders.

4. The Standing Counsel is justified in contending that this writ petition is barred by constructive resjudicata. I had noted his contentions while passing the interim order on 26.10.2006, as follows:

> It is contended that the petitioner ought to have challenged the orders impugned herein in O.P.39059/2001 which was disposed of as per Ext.P8 judgment dated 8.8.2006. Standing Counsel has cited the decision of the Supreme Court in **Forward Construction Co., Municipal Corporation of Greater Bombay v Prabhad Mandal (regd.)**(AIR 1986 SC 391) (Paragraph 20) and **Workmen of Cochin Port Trust v Board of Trustees of the Cochin Port Trust and another** (AIR 1978 SC 1283). According to him the `might and ought' principle squarely applies to the facts of this case.

5. The petitioner ought to have challenged the validity of the orders impugned herein in the very same O.P. in which those orders

were produced and discussions were made with respect to the consequences that would flow from the failure to challenge those orders. This Court has not granted permission to the petitioner to keep open his right, if any, to challenge the validity of those orders. It also does not appear that the petitioner made any such prayer before this Court to permit him to challenge those orders in a writ petition to be filed subsequently.

6. Exts. P6 and P7 were passed as early as on 26.2.2005 and 3.3.2005 whereas this writ petition has been filed only on 18.10.2006. The petitioner was prosecuting O.P.No. 39059/2001 before this Court when the impugned orders were passed. He has no explanation why he has chosen to file this writ petition after the lapse of 1½ years. Article 226 is a Constitutional provision intended to provide speedy remedy. This Court has held that the aggrieved person shall invoke the said remedy, as early as possible, under normal circumstances, within a reasonable time. It has further been held that the reasonable time under normal circumstances means a period of three months. In a case where the so called aggrieved person has approached this Court far beyond the reasonable time, an explanation is due from him. In the absence of such explanation, the writ petition is liable to be

dismissed for delay and laches.

This writ petition is dismissed as one barred by constructive resjudicata and for delay and laches.

K.K.DENESAN, JUDGE

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